

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GEORGE SWAN and MELISSA
BELL,

Plaintiffs,

v.

NICK GROUP, INC. d/b/a SWANSON
TOWING AND RECOVERY and
SARAH CHA,

Defendants.

CIVIL ACTION FILE

NO. 1:11-cv-1713-WSD

**JOINT MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT**

Plaintiffs George Swan and Melissa Bell (“Plaintiffs”) and Defendants Nick Group, Inc. d/b/a Swanson Towing & Recovery and Sarah Cha (“Defendants”) (collectively the “Parties”), by and through their undersigned counsel, hereby file this Joint Motion for Approval of Settlement Agreement pertaining to the above-captioned case. In support thereof, the attorneys for the Parties state as follows.

The Parties hereby request approval of the Parties’ Settlement Agreement that is attached hereto as Exhibit A (redacted). The Parties’ settlement was reached following mediation with Magistrate Judge Russell G. Vineyard. Because

Plaintiffs' claims arise under the FLSA, the Parties seek the Court's approval of the Settlement Agreement.

Citation of Legal Authorities

Pursuant to the case law regarding settlement of FLSA claims, there are three ways in which claims under the FLSA can be settled and released by an employee. First, the FLSA allows an employee to settle and waive his claims under the FLSA if the payment of unpaid wages by the employer to the employee is supervised by the Secretary of Labor. See 29 U.S.C. § 216(c). Second, in the context of a private lawsuit brought by an employee against an employer under § 216(b) of the FLSA, an employee may settle and release FLSA claims against an employer if the parties present the district court with a proposed settlement and the district court approves the fairness of the settlement. Schulte, Inc. v. Gandi, 328 U.S. 108, 66 S. Ct. 925, 928 n.8 (1946); Lynn's Food Stores, Inc. v. U.S., 679 F.2d 1350, 1353 (11th Cir. 1982); Taylor v. Progress Energy, Inc., 493 F.3d 454 (4th Cir. 2007). Third, the parties to an FLSA claim may settle the claim without judicial approval if the plaintiff will receive all of the relief to which he would be entitled if his claims were proven. Mackenzie v. Kindred Hospitals East, L.L.C., 276 F. Supp. 2d 1211, 1217 (M.D. Fla. 2003). There is a presumption in favor of approving a settlement as fair, but court review is appropriate to ensure fairness to

the parties. In re Dollar General Stores FLSA Litig., 2011 WL 3904609, *2 (E.D.N.C. Aug. 23, 2011).

The Parties agree that the instant action involved disputed issues. The Parties further agree that the settlement negotiated and reached by the Parties at the mediation is a fair and just settlement of Plaintiff's claims given the facts and legal authority applicable to this case.

A. Plaintiffs George Swan and Melissa Bell

Plaintiffs argue that that they worked hours for which they did not receive overtime and that they were paid at their regular rate for all time worked. Plaintiff Bell further argues that she worked hours for which she did not receive the minimum wage. Plaintiffs agree to the settlement payment negotiated through counsel at the mediation with Judge Vineyard.

B. Defendants Nick Group, Inc. and Sarah Cha

Defendants dispute Plaintiffs' allegations and deny they owe wages for unpaid overtime and minimum wage hours as defined by the FLSA but, following mediation with Judge Vineyard, Defendants have agreed to pay Plaintiffs a settlement.

Conclusion

THEREFORE, because the Parties have settled all claims, the Parties respectfully request that the Court enter an Order (attached hereto as Exhibit B) approving the amended Settlement Agreement.

Respectfully submitted this 21st day of November, 2013.

/s/ Paul J. Sharman

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CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2013, I electronically filed the foregoing JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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